

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ANGEL SMITH

PLAINTIFF

vs.

No.
1:01CV7-D-D

ROTHER DEVELOPMENT, INC. d/b/a
ROTHER COMPUTER SOLUTIONS; and
RICHARD FOWLER

DEFENDANTS

OPINION GRANTING DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

Presently before the court is the Defendants' motion for partial summary judgment. Upon due consideration, the court finds that the motion should be granted. The Plaintiffs' claims for negligent hiring, negligent/reckless training and supervision, breach of contract, and any Title VII claims asserted against the Defendant Richard Fowler in his individual capacity shall be dismissed.¹

A. Factual Background

The Plaintiff, Angel Smith, was hired as a receptionist by the Defendant Rothe Development, Inc. (Rothe) in February of 1999. She worked at Rothe's Columbus, Mississippi, division until she quit in June of 2000.

The Plaintiff filed this suit on December 13, 2000, asserting claims for sexual harassment based on the actions of one of her co-workers (Defendant Richard Fowler), negligent hiring, negligent/reckless training and supervision, breach of contract, assault, and invasion of privacy.

The Defendants filed the present motion for partial summary judgment on October 30, 2001,

¹The Plaintiff's claims for assault, invasion of privacy, and for sexual harassment against the Defendant Rothe Development, Inc. were not addressed in this motion.

seeking to dismiss the Plaintiff's claims for negligent hiring, negligent/reckless training and supervision, breach of contract, and any Title VII claims asserted against the Defendant Richard Fowler in his individual capacity. For the reasons set forth below, the court finds that the Defendants' motion should be granted.

B. Summary Judgment Standard

A party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden then shifts to the non-movant to go beyond the pleadings and "by...affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." Celotex Corp., 477 U.S. at 324. That burden is not discharged by mere allegations or denials. Fed. R. Civ. P. 56(e).

While all legitimate factual inferences must be viewed in the light most favorable to the non-movant, Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202 (1986); Celotex Corp., 477 U.S. at 322. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).

In the case *sub judice*, the Plaintiff has failed to respond to the Defendants' motion for partial summary judgment. While this court cannot grant summary judgment merely because there is no

opposition to the motion, the court may accept the Defendants' version of the facts as undisputed and grant the motion if the Defendants make a prima facie showing of their entitlement to summary judgment. Hetzel v. Bethlehem Steel Corp., 50 F.3d 360, 362 (5th Cir. 1995); Eversley v. Mbank Dallas, 843 F.2d 172, 173 (5th Cir. 1988).

C. Discussion

1. The Plaintiff's Claims for Negligent Hiring and Negligent/Reckless Training and Supervision

The Plaintiff asserts two separate negligence-based claims in her complaint, one for the Defendant Rothe's negligent hiring of Richard Fowler, and the other for Rothe's negligent or reckless training and supervision of its employees, including Fowler.

Section 71-3-9 of the Mississippi Code provides that:

The liability of an employer to pay [workmens'] compensation shall be exclusive and in place of all other liability of such employer to the employee . . . and anyone otherwise entitled to recover damages at common law or otherwise from such employer on account of such injury . . .

Miss. Code Ann. § 71-3-9.

Clearly, the Plaintiff's negligence-based claims are barred by Section 71-3-9, rendering summary judgment on those claims appropriate. See Allen v. NPC Int'l, Inc., No. 1:95CV20-B-D, 1996 WL 407564, at *5 (N.D. Miss. June 10, 1996) (holding, in employment discrimination case, that "any state tort claims grounded in negligence asserted by the plaintiff would be barred by the exclusive remedy provision of the Mississippi Workers' Compensation Law."); Campbell v. Jackson Bus. Forms Co., 841 F. Supp. 772, 774-75 (S.D. Miss. 1994) (holding that claims grounded in negligence and arising out of employer-employee relationship are barred); Ward v. Bechtel Corp., 102 F.3d 199, 203-04 (5th Cir. 1997) (negligence-based claims brought against employer in Title VII suit were barred by exclusive remedy provision of Texas Workers' Compensation Act).

Pursuant to the above-cited authority, the court holds that there is no genuine issue of material fact as to the Plaintiff's claims for negligent hiring and negligent/reckless training and supervision, and the

Defendants are entitled to judgment as a matter of law. Accordingly, the Defendants' motion for partial summary judgment shall be granted as to these claims.

2. The Plaintiff's Claim for Breach of Contract

The Plaintiff has asserted a claim for breach of contract based upon an alleged "written employment contract and/or implied contract . . . between Plaintiff and Rothe . . ." See Complaint at 5.

It is undisputed, however, that the Plaintiff had no written employment contract with Rothe. And as for the Plaintiff's assertion of an implied contract with Rothe, the court notes that Mississippi has long adhered to the rule that an employment relationship may be terminated at will by either party in the absence of a formal, written employment contract. Solomon v. Walgreen Co., 975 F.2d 1086, 1089 (5th Cir. 1992); Perry v. Sears, Roebuck & Co., 508 So. 2d 1086, 1088 (Miss. 1987); Kelly v. Mississippi Valley Gas Co., 397 So. 2d 874, 874-75 (Miss. 1981). Further, during her employment application process, the Plaintiff signed the following acknowledgment:

I UNDERSTAND AND AGREE THAT IF I AM OFFERED EMPLOYMENT BY ROTHE DEVELOPMENT, INC., MY EMPLOYMENT WILL BE FOR NO DEFINITE TERM AND THAT EITHER I OR ROTHE DEVELOPMENT, INC. WILL HAVE THE RIGHT TO TERMINATE THE EMPLOYMENT RELATIONSHIP AT ANY TIME, WITH OR WITHOUT CAUSE, AND WITH OR WITHOUT NOTICE. I UNDERSTAND THAT THIS JOB APPLICATION DOES NOT CONSTITUTE AN EMPLOYMENT CONTRACT IN THE EVENT I AM HIRED BY ROTHE DEVELOPMENT, INC. I ALSO UNDERSTAND THAT THIS STATUS CAN ONLY BE ALTERED BY A WRITTEN CONTRACT OF EMPLOYMENT WHICH IS SPECIFIC AS TO ALL MATERIAL TERMS AND IS SIGNED BY ME AND THE PRESIDENT OF THE COMPANY.

See Plaintiff's Application for Employment, at 6. It is undisputed that the Plaintiff's at-will employment status was never altered by a written contract.

Accordingly, the court holds that the employment relationship between the parties was at-will, and terminable by either party without notice. As such, there is no genuine issue of material fact as to the Plaintiff's claim for breach of contract, and the Defendants are entitled to judgment as a matter of law. Accordingly, the Defendants' motion for partial summary judgment shall be granted as to this

claim.

3. The Plaintiff's Potential Title VII Claims Against the Defendant Fowler

It is unclear whether the Plaintiff is formally asserting a Title VII claim against the Defendant Richard Fowler in his individual capacity, but the Plaintiff's complaint seeks damages jointly and severally against both Fowler and Rothe without differentiating among the claims.

It is axiomatic in the Fifth Circuit that there is no individual liability under Title VII. See Grant v. Lone Star Co., 21 F.3d 649, 651-53 (5th Cir. 1994) (holding that there is no Title VII liability for individuals unless they otherwise qualify as "employers"); Dandridge v. Chromcroft Corp., 914 F. Supp. 1396, 1403 (N.D. Miss. 1996) ("[I]t is established in the Fifth Circuit that supervisors who work for private employers cannot be held individually liable under Title VII."); Allen, 1996 WL 407564, at *2 ("[L]iability under Title VII does not attach to persons acting in their individual capacity.").

It is undisputed that the Defendant Fowler was a co-worker of the Plaintiff, and not her "employer" as that term is defined by Title VII. As such, Fowler cannot be held individually liable under Title VII, and the Defendants are entitled to judgment as a matter of law on any Title VII claims the Plaintiff may have asserted against Fowler.

D. Conclusion

In sum, the court finds that there is no genuine issue of material fact as to the Plaintiff's claims for negligent hiring, negligent/reckless training and supervision, breach of contract, and any Title VII claims asserted against the Defendant Richard Fowler in his individual capacity; and the Defendants are entitled to judgment as a matter of law on those claims. Accordingly, the Defendants' motion for partial summary judgment shall be granted, and those claims shall be dismissed.

A separate order in accordance with this opinion shall issue this day.

This the ____ day of December 2001.

Chief Judge

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ROTHER DEVELOPMENT, INC. d/b/a
ROTHER COMPUTER SOLUTIONS; and
RICHARD FOWLER

DEFENDANTS

ORDER GRANTING DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

Pursuant to an opinion issued this day, it is hereby ORDERED that

- (1) the Defendants' motion for partial summary judgment (docket entry 28) is GRANTED;
and
- (2) the Plaintiff's claims for negligent hiring, negligent/reckless training and supervision, breach of contract, and any Title VII claims asserted against the Defendant Richard Fowler in his individual capacity are DISMISSED WITH PREJUDICE.

All memoranda, depositions, declarations and other materials considered by the court in ruling on this motion are hereby incorporated into and made a part of the record in this action.

SO ORDERED, this the ____ day of December 2001.

Chief Judge